

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,)	
)	
v.)	Criminal No. 09-104
)	
RICHARD KOSMAR,)	
)	
Defendant)	
)	

MEMORANDUM OPINION

Pending before the court is a motion for clarification of the sentence imposed on defendant Richard Kosmar (“Kosmar”) for his violation of supervised release, with a letter in support (ECF Nos. 68, 69). The motion may be resolved without a response from the government.

Factual and Procedural History

On December 22, 2009, the court sentenced Kosmar to 80 months’ imprisonment at count 1 of Crim. No. 09-104 after his conviction for possession with intent to distribute 5 kilograms or more of cocaine, to be followed by 5 years of supervised release. Supervision began on August 5, 2015.

On March 26, 2018, the probation office filed a petition to revoke Kosmar’s supervised release. The petition alleged that Kosmar violated the following conditions of his supervised release: (a) that he not commit another federal, state or local crime (violation 1, Grade A); and (b) he not associate with any persons engaged in unlawful activity or with any person convicted of a felony, unless granted permission to do so by the probation officer (violation 3, Grade C). Violations 1 and 3 arose on March 20, 2018, when Kosmar was indicted in this court at Crim. No.

18-74 and charged with conspiracy to distribute cocaine. The petition alleged that Kosmar also violated the conditions of his supervised release that he not unlawfully possess a controlled substance (Grade B), and refrain from any unlawful use of a controlled substance (Grade C), based upon numerous positive drug tests (“violations 2 and 4”).

The supervised release proceeding was bifurcated, due to the pending criminal charges at Crim. No. 18-74. In the first hearing on June 26, 2018, Kosmar admitted to violations 2 and 4. The court sentenced him “to a term of imprisonment of Time Served (approximately 3 months, which will be credited to any term of imprisonment imposed for the Grade A violation).” (ECF No. 57). Kosmar remained in custody.

At a second hearing on July 9, 2019, Kosmar admitted violations 1 and 3. The advisory guideline range for the Grade A violation was 27 to 33 months imprisonment. The court sentenced Kosmar to a term of imprisonment of 24 months (including credit for approximately 3 months, previously served). (Minute Entry, ECF No. 66).

In the judgment order, the court stated the following term of imprisonment: “24 months (which includes credit for time previously served on violations 2 and 4), with 12 months to be served concurrent with the sentence imposed at Crim. No. 18-74.” (ECF No. 67).

Discussion

In the pending motion and letter, Kosmar seeks clarification about whether he is entitled to credit for the three months he served in prison from March 26, 2018 until June 26, 2018 for violations 2 and 4. Kosmar asks whether there is a way to “fix this” or whether he “loses” those 90 days. (ECF No. 68). The records in this case make clear that Kosmar is not entitled to any additional credit.

As the court explained in imposing judgment in July 2019, Kosmar received credit for the 3 months he served on violations 2 and 4. The court reduced Kosmar's sentence on the Grade A violation from 27 months (the low end of the advisory guideline range) to 24 months, to reflect a credit for the time he previously served on violations 2 and 4. In addition, the court determined that 12 of the remaining 24 months would run concurrent with the term of imprisonment imposed at Crim. No. 18-74. In sum, the sentence imposed on Kosmar is correct. He did not "lose" those 90 days and there is no error that must be fixed.

Conclusion

For the reasons set forth above, the motion for clarification (ECF No. 68) will be DENIED. Defendant already received credit for the time in prison he served on violations 2 and 4, and he is not entitled to any additional credit.

An appropriate order will be entered.

BY THE COURT:

/s/ Joy Flowers Conti
Joy Flowers Conti
Senior United States District Judge

Dated: June 17, 2020